

ZONING BOARD OF REVIEW

MINUTES

July 1, 2009

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, July 1, 2009 at 7:30 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairman David Collins, John Jackson, Richard Taylor, Susan Krumholz, Lise Gescheidt, Michael Mello (Alternate) & Raymond LaFazia (Alternate)

Also present were: Peter Ruggiero, Town Solicitor, Mary Ann Escobar, Court Reporter and Gareth Eames, Building Inspector.

1. A petition has been filed by the Tiverton Yacht Club, 58 Riverside Drive requesting a variance to Article V, Section 1 of the Tiverton Zoning Ordinance in order to permit existing lockers to remain located at 0 Riverside Drive, Tiverton, RI being Map 6-5, Block 73, Card 30 on Tiverton Tax Assessor's maps closer to the side yard setback than currently allowed in a waterfront zoning district.

DECISION: The Tiverton Yacht Club requested an additional continuation due to they are still awaiting a survey of the property to be completed. Ms. Gescheidt made a motion to continue. Ms. Krumholz seconded. The Vote was 4-1. Voting for were Mr. Jackson, Ms. Krumholz, Ms. Gescheidt & Mr. Mello. Opposed was Mr. Taylor.

2. A petition has been filed by Olive M. & Rosemary Eva of 4019 Main Road, Tiverton, RI appealing the decision of the Building Official to issue a permit on January 13, 2009 for a freestanding sign located at 3988 Main Road, Tiverton, RI being Map 2-3 Block 125 Card 16 on Tiverton Tax Assessor's Maps and located in an R80 zoning district.

DECISION: This petition was continued from last month. Chairman David Collins recused himself. Mr. John Jackson served as Vice Chair for this matter.

Attorney Allard appeared on behalf of the respondent. Attorney Leary appeared on behalf of Rosemary Eva.

Mr. Alan Booth was called as a witness and testified as follows: He owned the property from July 18, 1977 to September 1, 1983 with his wife. During the years that he lived there, the main building where Sakonnet Purls currently is was his residence. The

smaller shed in the back they used for storage. There was a landscaping business which was run on a separate lot to the north.

In 1980 he was divorced from his wife and moved to Newport. His wife resided at the property, but his name was still on the deed. He stated his wife leased the property to the Hortons and he does not know what businesses were in there from that point on or any signs for such.

Mr. Gareth Eames was called as a witness and testified as follows: He issued a permit for a sign for Back Alley Woodworks after visually observing it was already in place. He stated that there are currently two signs on the said property.

Ms. Louise Silverman was called as a witness and testified as follows: She has owned the property for 24 years and there are three buildings on the property. The main building is where the knitting store. The smaller building in the back is where Back Alley Woodworks is currently and the shed is used for yarn that is on sale.

When she first bought the property, there was an art gallery upstairs which was part of the Thistle, then the Thistle gift shop and then at the far end was her knit shop. In another building was the Woodpeckers, which was a furniture store. The sign for Back Alley Woodworks replaced the sign for the Woodpeckers.

Ms. Silverman also stated that she originally had the Sakonnet Purls sign on a post by a tree, but because of the wind kept blowing it off, she moved the sign to a tree. She stated there was a sign directly in front of the property for the Thistle and then right down on the border of where Terry Holland's parking lot is, there was another sign for the Thistle.

The property at one time was occupied by four different businesses: The Magic Garden, Sakonnet Purls, The Beads, and The Windmill. There also were other businesses occupying that property. There was a clock repair man and a fish broker who rented on that property.

In order to purchase the property from the bank, the bank needed a zoning opinion for the property which she obtained from Attorney Tom Brady. She has also put substantial repairs and improvements to the property. Ms. Silverman also stated that the electricity was not working for approximately four years in that building, and therefore, she could not rent out a space with no heat or electric.

Attorney Thomas Brady was called as a witness and testified as follows: He was requested by Ms. Silverman to write an opinion regarding the property. He concluded that the property was a nonconforming use of multiple commercial retail use consisting of furnishing of services and providing for sale of goods at retail.

Mr. James Weir, audience member, stated that the current ordinance as it is phrased is poorly written for businesses which are located in a historic zone. The board is going to be wasting its time having to adjudicate each and every sign at Four Corners because he believes many of those signs are not in compliance with the ordinance the way that it's written. He submitted photographs of each sign which he believes does not comply. The Board marked that as an exhibit for identification only.

Christopher Spencer, Town Planner, stated that he believed the sign in question clearly fits into the ordinance.

Both attorneys made their closing arguments and the meeting was continued until next month so the board can vote.

Exhibits marked:

Exhibit G: Affidavit of Mr. Booth.

Respondent's One: Minutes of Zoning hearing dated June, 1980.

Respondent's Two: Building Permit Application, 1980.

Respondent's Three: Newspaper Ad regarding the Thistle

Respondent's Four: Tax card for Town of Tiverton

Respondent's Five: Affidavit of Sandra Lawton White

Respondent's Six: Building Permit for sign dated 11/19/85

Respondent's Seven: Note from Building Inspector Borden dated 11/19/85

Respondent's Eight: Photograph of building where Back Alley Woodworks occupies

Respondent's Nine: Photograph of Back Alley sign

Respondent's Ten: Photograph of property's signage taken approximately 1987

Respondent's Eleven: Photograph of front of property taken approximately 2001

Respondent's Twelve: Newspaper Ad for the Magic Garden 1986

Respondent's Thirteen: Sketch plan done by Mrs. Silverman of signs located on the
Property

Respondent's Fourteen: Opinion letter written by Attorney Brady in 1985

3. Remanded by Superior Court to allow for the introduction of new evidence and reconsideration by the board of their decision dated April 3, 2008 on the matter of: A petition has been filed by Bryan N. Sanford, Jr. of 84 Cynthia Avenue, Tiverton, RI appealing a decision of the Tiverton Building/Zoning Official to issue a notice of violation dated January 28, 2008 to cease and desist construction of a new single family dwelling located at Cornell Road (0 Crandall Road) Tiverton, RI being Map 4-8 Block 140 Card 4 on Tiverton Tax Assessor's Maps and located in a R80 zone.

DECISION: This petition was re-scheduled until next month due to time constraints.

4. A petition has been filed by Diana M. Botelho of 136 Maple Drive, Tiverton, RI requesting a variance to Article 6, Section 3.b. of the Tiverton Zoning Ordinance in order to allow an existing garage to remain in the front yard after adjusting the western property line through an Administrative Subdivision at 136 Maple Drive, Tiverton, RI being Map 3-7 Block 211 Card 1C on Tiverton Tax Assessor's Maps whereby accessory structures can not occupy the front yard in an R80 zoning district.

DECISION: This petition was re-scheduled until next month due to time constraints.

5. A petition has been filed by Stephen E. and Susan B. Plaud of 1986 Main Road, Tiverton, RI requesting a variance to Article V, Sections 1, 2, & 3 of the Tiverton Zoning Ordinance in order to subdivide one parcel into two at 1986-1988 Main Road, Tiverton, RI being Map 1-10 Block 89 Lot 19 on Tiverton Tax Assessor's Maps whereby leaving Lot A with less than required lot area, lot width, lot frontage, suitable area, front, rear and side yard setbacks and Lot B with less than required lot frontage, lot width and front yard setback located in an R40 zoning district.

DECISION: This petition was re-scheduled until next month due to time constraints.

6. A petition has been filed by Elizabeth Peckham of Wishing Stone Farm, 25 Shaw Road, Little Compton, RI requesting a variance to Article IV Section 10.g. of the Tiverton Zoning Ordinance in order to conduct a Farmer's Market at 1215 Main Road, Tiverton, RI being Map 6-7 Block 195 Lot 1A on Tiverton Tax Assessor's Maps whereby this use is not allowed in an R40 zoning district.

DECISION: This petition was re-scheduled until next month due to time constraints.

7. An appeal has been filed by the Tiverton Yacht Club of 58 Riverside Drive, Tiverton, RI against a decision of the Building/Zoning Official to issue a cease and desist, dated May 22, 2009, of the marina use on the property located at 0 Riverside Drive, Tiverton, RI being Map 6-5 Block 73 Card 30 on Tiverton Tax Assessor's maps and located in a Waterfront zoning district.

DECISION: The Tiverton Yacht Club requested that this petition be withdrawn.

8. An appeal has been filed by the Tiverton Yacht Club of 58 Riverside Drive, Tiverton, RI against a decision of the Building/Zoning Official to issue a cease and desist, dated May 27, 2009, of the marina use on the property located at 0 Riverside Drive, Tiverton, RI being Map 6-5 Block 73 Card 30 on Tiverton Tax Assessor's maps and located in a Waterfront zoning district.

DECISION: The Tiverton Yacht Club requested that this petition be withdrawn.

ADMINISTRATIVE ITEMS:

Mr. Taylor made a motion to accept the June minutes. Ms Krumholz seconded. The Vote was unanimous. Voting were: David Collins, Richard Taylor, Susan Krumholz, John Jackson & Lise Gescheidt.

Mr. Jackson made a motion to continue the election of officers until September. Mr. Taylor seconded. Vote was unanimous. Voting were: David Collins, Richard Taylor, Susan Krumholz, John Jackson & Lise Gescheidt.

Ms. Krumholz made a motion to adjourn. Ms. Gescheidt seconded. Vote was unanimous. Voting were: David Collins, Richard Taylor, Susan Krumholz, John Jackson & Lise Gescheidt.

Whereupon the hearing adjourned at 11:13 p.m.

ZBR:mae